



ACT
Government

Justice and Community Safety

JACS2021/524

Via email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION ACCESS APPLICATION

I refer to your application under the [Freedom of Information Act 2016](#) (the Act), received by the Justice and Community Safety (JACS) Directorate on 15 February 2021 in which you sought access to:

“all documents relating to the ACT Government’s decision to conduct judge-alone trials as a result of the ongoing COVID-19 pandemic. This request includes, but is not limited to:

- *Ministerial briefs about judge-alone trials (including any briefs about the COVID-19 Emergency Response Bill 2020 as it relates to judge-alone trials);*
- *advice and correspondence from/to the ACT Government Solicitor about judge-alone trials;*
- *any other legal advice or correspondence received by the ACT Government in relation to judge-alone trials;*
- *advice and correspondence in relation to the proposed amendment by Mr Hanson to amend the COVID-19 Emergency Response Bill 2020 in relation to judge-alone trials; and*
- *correspondence and media statements/responses (including drafts) regarding the article in the Canberra Times on 14 February 2021 in relation to judge-alone trials.”*

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Decision

I have decided to refuse access to a significant portion of the access application and partially release 14 documents containing information within scope. The documents to be partially released are outlined in the *Schedule of documents* and the reasons for my decision in relation to the release of information contained in these documents is outlined at [Attachment A](#).

Intention to Refuse

In relation to my intention to refuse to deal with your application in part under section 43 of the Act, as a significant portion of this information is subject to Schedule 1 of the Act. This information is taken to be contrary to the public interest. Specifically, the following parts of the scope:

- *Ministerial briefs about judge-alone trials (including any briefs about the COVID-19 Emergency Response Bill 2020 as it relates to judge-alone trials);*
- *advice and correspondence from/to the ACT Government Solicitor about judge-alone trials;*
- *any other legal advice or correspondence received by the ACT Government in relation to judge-alone trials.*

Section 43 of the Act states that:

43 Refusing to deal with application—general

(1) A respondent may refuse to deal with an access application wholly or in part only if—

- (e) the access application is expressed to relate to government information of a stated kind and government information of that kind is taken to be contrary to the public interest to disclose under schedule 1.

A significant portion of the material you have requested is considered either Cabinet information (Schedule 1, 1.6) and/or subject to legal professional privilege (Schedule 1, 1.2), as such it is taken to be contrary to the public interest to release.

Consultation Period

Section 46(1)(b) states that before refusing to deal with an access application in part for the abovementioned ground for refusal, the applicant must be provided reasonable opportunity to consult with the respondent.

JACS recommends that you significantly refine/reduce the scope of your request. You are entitled to amend your application, and if you do the day the amended application is received becomes the commencement date of the decision process.

The consultation period required in accordance with section 46 (4) of the Act, is 10 working days from the receipt of this letter. A longer period can be agreed before or after the end of the 10 working days. This consultation period gives you an opportunity to consult with JACS.

If you decide not to provide any further information or submit a revised application by 16 June 2021, your access application for this portion of your request will be taken as withdrawn.

Online publishing – disclosure log

Under section 28 of the Act, JACS maintains an online record of access applications called a disclosure log. My decision will be published on the JACS disclosure log no later than 10 days after the decision. Your personal contact details will not be published.

You may view the JACS' disclosure log at: <http://www.justice.act.gov.au/page/disclosure-log>

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published on the JACS disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

The review of decision application form is available at:

https://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601

Ph: (02) 6207 1740

<http://www.acat.act.gov.au/>

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact JACS FOI via jacsfoi@act.gov.au or phone 6207 2167.

Yours sincerely



Danielle Krajina
Information Officer
15 March 2021

Attachment A – Reasons for decision

1. Material considered

In reaching my decision, I considered:

- your original access application
- the documents containing the information that falls within the scope of your access application
- consultation with JACS officers
- *Freedom of Information Act 2016*

2. Reasons for my decision

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2

I have included below the factors relevant to my decision on access.

2.1. Information contrary to public interest to disclose

I have determined that some of the material within the scope of your request contains information that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act.

Schedule 1, 1.1A Information in possession of a court or tribunal

(1) Information in the possession of a court or tribunal unless the information is administrative in nature.

1.2 Information subject to legal professional privilege.

There are some references within the media emails that relate to legal matters and material to be before the courts, as such it has been taken not to be in the public interest to release.

2.2. Clarification around highlighted material

You may notice that some of the material within the email chains are highlighted in yellow or blue. These are not marked redactions, but due to the quick turnaround of the media enquiry, some of the emails were highlighted so that key information could be found quickly and the final response cleared.

2.3. Public interest test

I have assessed the remaining information against the factors favouring disclosure and factors favouring non-disclosure in Schedule 2. On balance, I have decided that the information is in

the public interest to disclose with some redactions. I have included below the relevant factors for your information.

Factors favouring disclosure

- (i) promote open discussion of public affairs and enhance the government’s accountability;
- (ii) contribute to positive and informed debate on important issues or matters of public interest;
- (viii) reveal the reason for a government decision and any background or contextual information that informed that decision;
- (xiii) contribute to the administration of justice generally, including procedural fairness.

Factors favouring non-disclosure

2.2 (a) Factors favouring nondisclosure in the public interest

- (ii) prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act 2004.

I have placed considerable weight on the release of this information, noting that judge alone trials is a topic of public interest that this information relates to the administration of justice.

An important consideration is the protection of personal privacy of individuals. I have redacted the private mobile numbers of government employees and the mobile number, direct phone number and email address of the journalist who made enquiries in relation to the story, noting that he is publicly linked to the news article of 14 February 2021. These redactions are minor in nature.

3. Summary of my decision

In conclusion, I have decided to grant full access to four documents and part access to ten documents.